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law is due the development of artificial persons, as formed in modern law" (536); again, "The common law of the Territory of Orleans was the Roman-French-Spanish-law" (263). The Louisiana supreme court said in *Pecquet v. Pecquet's Exr.* (17 La. An. 228) that "the laws of Spain are judicially noticed but the laws of France must be proved." These are, however, exceptions to the author's usual accuracy of statement and as he has marshaled nearly all the authorities on his side of the question his book is a valuable contribution to the literature of the subject.

A valuable feature of the first volume is its full treatment of writers on Roman law, including those of the classical and mediaeval periods, but particularly of the famous names in Italian, French, and German legal historiography. Here we find short characterizations of the authors cited and explanations of their work. The second volume has the advantage for the American student of bringing the subject down to date by the addition of references to modern Roman codes and to cases decided in English jurisdiction in which Roman law principles are discussed. The third volume on bibliography is especially well done. Because of the completeness of the bibliographical features the entire work will be very valuable as a basis for class room work if presented by a teacher who is capable of toning down its excessive Romanism.

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The Early Diplomatic Relations Between the United States and Japan, 1853-1865. By PAYSON JACKSON TREAT, Ph.D. (Baltimore: Johns Hopkins University Press. 1917. Pp. ix, 459.)

When in 1911 J. H. Gubbins, C.M.G., Professor of Japanese Literature at Oxford and sometime Japanese secretary at H. B. M.'s Embassy in Tokyo, brought out his *Progress of Japan, 1853-1871* it seemed that a definitive study of the period immediately preceding and following the Restoration had appeared. The author of this review, in an article in the *Transactions* of the Asiatic Society of Japan, Vol. XLII, pp. 784-802, made the following estimate of Gubbins' book, "It hardly seems possible that further research will throw much more light on the Restoration period. . . ."

There is nothing in Professor Treat's volume which makes necessary a revision of that judgment, for the private correspondence of the

Honorable Robert Pruyn, the only new material to which he has had access, has contributed no new facts to our knowledge of the period. Yet so great is the contrast between the two books, in point of view and method, that the interested reading public will welcome the present work. Professor Treat confines himself to diplomatic proceedings, and throughout emphasizes American participation in the negotiations between the Treaty Powers and the Japanese. The method of presentation exhibits all the qualities and defects which are inherent in the standards of historical writing which have been set up in our universities. The citation of references is distractingly complete; the bibliography, while not exhaustive, is elaborate and less critical than it should be, since we do not look for an unbiased account of events in the writings of E. H. House, nor in those of Nitobé, Okuma and Brinkley. As well might one turn to the Japanese propagandists of today, Kawakami, Iyenaga, and Lindsey Russell, for accurate views. The generalizations of the present work are unobtrusive, but at times too hastily formed; the general tone is highly laudatory of the acts and intentions of the American diplomatic representatives, especially when contrasted with the "arrogance" of their British colleagues.

The first half of the book repeats the narrative of the years 1853-1858, and the statements are based upon Harris' official correspondence and diary—edited so brilliantly and inaccurately by Griffis in his *Townsend Harris, First American Envoy to Japan*—supplemented by the British Blue Books on Japan, the Japanese unofficial records—the *Kinsé Shi-riaku* and *Genji Yume Monogatari*—and secondary books. The last five chapters cover the story of the troubled years which followed the signing of the treaties by the Shogun's government. The turbulence of the period between 1858 and 1865 was due, as all competent writers since Mossman (1873) have agreed, to the failure of the emperor to ratify the treaties. Professor Treat adopts this view, setting it forth even in his preface, but in so doing he has offered no new explanation of the events. In a further generalization in this connection he surely falls into error when he states that in the domestic controversy as to whether the treaties were to be ratified or the foreign "barbarians" expelled, the Shogun's government consistently favored the former policy (pp. 375, footnote, and p. 408), and the imperial court the latter, and hence the Treaty Powers in pressing for ratification necessarily aligned themselves with the Shogun against the court. Such a statement is at most only half true. Whether or not the Shogun supported ratification depended on whether the pro-foreign or anti-foreign party

dominated his councils in Yedo. How else can the Exclusion Edict of June, 1863, be explained? It is beside the point to say that the Shogun was merely playing up to the sentiments of the emperor and did not intend that his instructions to expel the foreigners were to be taken seriously. Not all the "searchings of heart" on the question of expulsion went on in Kyoto. Yedo too had its lapses from strict adherence to the spirit of the treaties, as the edict in question demonstrates.

When this book reaches a second edition, it is to be hoped that the author will restate his generalizations where they are in error, will annotate his bibliography so as to indicate the relative merits of the secondary books mentioned, will moderate his unduly harsh anti-British tone, and remove some of the traces of his pro-Japanese bias, derived doubtless from the habit of relying too implicitly upon the writings of disguised Japanese propagandists.

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The President's Control of Foreign Relations. By EDWARD S. CORWIN, Ph.D. (Princeton: Princeton University Press. 1917.)

Professor Corwin's monograph on the President's power over the foreign relations will probably not need material revision or amendment hereafter. The controversies that have arisen between the executive and the legislative departments, so far as those relations have been concerned, cover practically all the points on which there can be dispute, and the results of former controversies are not likely to be reversed. If this were a general treatise on the powers of the President, what a change in it must by and by be made in a chapter on the President's invasion and capture of legislative powers, all of which the Constitution bestows on Congress!

In practically every contest in whatever field between the President and Congress, from the very beginning, the victory has rested with the President. Congress had ultimately to admit that it was wrong, even in the Tenure-of-Office Act with which it tied the hands of President Johnson. In all the matters of foreign relations both the right and the victory have been with the President. The language of the Constitution upon which successive Presidents have relied is sufficiently vague, but it gives no support to the contentions of Congress. Diplomacy and all the functions connected with diplomacy are surely executive and not legislative.